

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 24

March 9, 1998, 5:32 pm
Page S-1564 Temp. Record

INTELLIGENCE DISCLOSURE/Passage

SUBJECT: Intelligence Disclosure to Congress Act of 1998 . . . S. 1668. Passage.

ACTION: BILL PASSED, 93-1

SYNOPSIS: As reported and passed, S. 1668, the Disclosure to Congress Act of 1998, will require the President to inform certain Federal employees and contract employees that it is not "prohibited by law, executive order, or regulation or otherwise contrary to public policy" to inform Members of the appropriate congressional oversight committees of classified actions that evidence: "(a) a violation of any law, rule, or regulation; (b) a false statement to Congress on an issue of material fact; or (c) gross mismanagement, a gross waste of funds, a flagrant abuse of authority, or a substantial and specific danger to public health and safety." The President must inform the employees within 30 days and then report back to Congress within 60 days of the Act's enactment. The employees covered by the Act include employees in the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency, the Federal Bureau of Investigation, as well as any other Federal agency the President considers to be principally involved in foreign intelligence or counterintelligence activities.

Those favoring passage contended:

It is imperative that employees within the intelligence community feel safe to disclose information to Congress about misconduct in the executive branch, whether classified or not. Rather than leaking such information to the media, we want the intelligence community to bring evidence of government misconduct, fraud, or gross mismanagement to the appropriate congressional committees. Intelligence employees will only do so if they are protected from retribution.

(See other side)

YEAS (93)				NAYS (1)		NOT VOTING (6)	
Republican (54 or 100%)		Democrats (39 or 98%)		Republicans (0 or 0%)	Democrats (1 or 3%)	Republicans (1)	Democrats (5)
Abraham	Hutchinson	Akaka	Kennedy		Cleland	Coats- ²	Boxer- ²
Allard	Hutchison	Baucus	Kerrey				Durbin- ²
Ashcroft	Inhofe	Biden	Kerry				Glenn- ²
Bennett	Jeffords	Bingaman	Kohl				Leahy- ¹
Bond	Kempthorne	Breaux	Landrieu				Wyden- ²
Brownback	Kyl	Bryan	Lautenberg				
Burns	Lott	Bumpers	Levin				
Campbell	Lugar	Byrd	Lieberman				
Chafee	Mack	Conrad	Mikulski				
Cochran	McCain	Daschle	Moseley-Braun				
Collins	McConnell	Dodd	Moynihan				
Coverdell	Murkowski	Dorgan	Murray				
Craig	Nickles	Feingold	Reed				
D'Amato	Roberts	Feinstein	Reid				
DeWine	Roth	Ford	Robb				
Domenici	Santorum	Graham	Rockefeller				
Enzi	Sessions	Harkin	Sarbanes				
Faircloth	Shelby	Hollings	Torricelli				
Frist	Smith, Bob	Inouye	Wellstone				
Gorton	Smith, Gordon	Johnson					
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hagel	Thompson						
Hatch	Thurmond						
Helms	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

Although many Senators may assume that the Whistle Blower Protection Act protects all Federal employees, it actually exempts the intelligence community. In fact, the whistle blower statute expressly prohibits Federal employees from revealing information sealed by Executive order in the interest of national defense. Executive order No. 12,958 reaffirms that classified information must remain in the originating agency. An employee who discloses such classified information without prior executive approval could lose his or her security clearance, be reprimanded, or be fired.

Last year, the Senate overwhelmingly passed S. 858, the Intelligence Authorization Act for fiscal year 1998, which contained a provision to correct this exemption. That provision, section 306, directed the President to inform all Federal employees that they could safely disclose classified information to the appropriate congressional oversight committees or to their own congressional representatives when they reasonably believed that the information evidenced a violation of law, a false statement to Congress, a gross waste of funds or abuse of authority, or a substantial and specific danger to public health or safety. Shortly after the Senate passed that Act, however, the Administration issued a Statement of Administration Policy, stating that section 306 was unconstitutional and that the President would veto the bill if it were retained. Because of that threat, section 306 was significantly amended to cover only intelligence employees, to limit disclosure only to committees with primary jurisdiction over the involved agency, and to add a clause stating that Congress and the executive branch have equal standing to receive this information.

Members of both parties felt that these changes resulted in inadequate protections. Accordingly, the Senate Intelligence Committee held hearings this year to examine the issue more closely. At those hearings, constitutional scholars and legal experts agreed with Members that Congress has a right if not a duty to conduct closer oversight because it shares with the President the power to regulate national security information. Congress clearly has major national security responsibilities under the Constitution, including the power to declare war and the sole power to appropriate funds for national defense. It does not have authority to inhibit the President from performing his constitutionally assigned functions, but neither does the President have authority to inhibit Congress from exercising its constitutional functions.

As a result of those hearings the Intelligence Committee drafted and reported unanimously this bill, which is a revised version of section 306 from last year. This bill will both make certain that national security information is protected and that the appropriate committees of Congress have access to the information they need. We in Congress should be able to decide what we need to know, rather than depend on the whims of the Chief Executive to tell us what he thinks we need to know, to perform our oversight function. We therefore urge our colleagues to join us in passing this bill.

No arguments were expressed in opposition to passage.